

1 DAVID R. EBERHART (S.B. #195474)
deberhart@omm.com
2 JAMES K. ROTHSTEIN (S.B. #267962)
jrothstein@omm.com
3 DANIEL H. LEIGH (S.B. #310673)
dleigh@omm.com
4 O'MELVENY & MYERS LLP
Two Embarcadero Center
5 28th Floor
San Francisco, California 94111-3823
6 Telephone: +1 415 984 8700
Facsimile: +1 415 984 8701

7
8 JOSEPH C. GRATZ (S.B. #240676)
jgratz@durietangri.com
9 ADITYA V. KAMDAR (S.B. #324567)
akamdar@durietangri.com
10 SAMUEL J. ZEITLIN (S.B. #327369)
szeitlin@durietangri.com
11 DURIE TANGRI LLP
12 217 Leidesdorff Street
13 San Francisco, CA 94111
14 Telephone: +1 415 362 6666
15 Facsimile: +1 415 236 6300

16 Attorneys for Plaintiffs
17 ELASTICSEARCH, INC. and
18 ELASTICSEARCH B.V.

19 Attorneys for Defendants
20 AMAZON.COM, INC. and
21 AMAZON WEB SERVICES, INC.

22
23
24
25
26
27
28
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

14 ELASTICSEARCH, INC., a Delaware
15 corporation, and ELASTICSEARCH B.V., a
16 Dutch corporation,

17 Plaintiffs,

18 v.

19 AMAZON.COM, INC., a Delaware corporation,
20 and AMAZON WEB SERVICES, INC., a
21 Delaware corporation,

22 Defendants.

23 Case No. 5:19-cv-06158-EJD

24 **STIPULATION AND [PROPOSED] ORDER
25 TO MODIFY CASE SCHEDULE;
26 DECLARATION OF JOSEPH C. GRATZ**

27 Ctrm: 4, 5th Floor

28 Judge: Honorable Edward J. Davila

1 Pursuant to Civil Local Rules 6-1(b) and 6-2, Plaintiffs Elasticsearch, Inc. and elasticsearch B.V.
2 (“Plaintiffs”) and Defendants Amazon.com, Inc. and Amazon Web Services, Inc. (“Defendants”), by and
3 through their attorneys of record, stipulate and request as follows:

4 WHEREAS, the Court entered a Case Management Order on January 22, 2020 (Dkt. No. 26), and
5 the Court, pursuant to the parties’ stipulations, entered Orders to Modify the Case Schedule on June 17,
6 2020 (Dkt. No. 28), September 24, 2020 (Dkt. No. 30), December 4, 2020 (Dkt. No. 32), March 29, 2021
7 (Dkt. 34), and June 24, 2021 (Dkt. No. 36);

8 WHEREAS Defendants on April 12, 2021 launched OpenSearch, a fork of Elasticsearch source
9 code licensed under the Apache 2.0 license that uses branding that does not incorporate the
10 ELASTICSEARCH mark;

11 WHEREAS Defendants on June 25, 2021 announced that the Open Distro for Elasticsearch project
12 website would be selectively decommissioned and that all future project updates would be available on
13 the OpenSearch website under the OpenSearch name;

14 WHEREAS Defendants, on September 8, 2021 renamed Amazon Elasticsearch Service to Amazon
15 OpenSearch Service;

16 WHEREAS the renaming of September 8, 2021, combined with the aforementioned changes,
17 provides to the parties sufficient factual clarity regarding Defendants’ intended usages to determine
18 quickly whether the parties may reach a full resolution of Plaintiffs’ claims; accordingly, the parties do
19 not expect that further continuances of the Case Management Schedule will be necessary;

20 WHEREAS the parties respectfully submit that continuing the existing deadlines in this case while
21 the parties continue to engage in substantive settlement discussions would serve the interests of judicial
22 economy, minimize the burden and expense of discovery on the parties, and maximize the opportunity
23 for settlement and the efficient progress of this litigation;

24 WHEREAS the parties respectfully submit that good cause exists to continue the existing deadlines
25 by ten weeks to minimize use of the Court’s time and costs to the parties while the parties continue to
26 conduct productive settlement discussions;

27 WHEREAS the parties expect that, should their settlement talks not resolve this matter in its
28 entirety, they will meet the case deadlines proposed below;

1 NOW, THEREFORE, the parties, through their respective counsel, hereby stipulate to and
 2 respectfully request that the Court order the following modifications to the case management and pretrial
 3 dates:

Event	Current Deadline	New Deadline
Joint Trial Setting Conference Statement (see Section III(C)(2) of Standing Order for Civil Cases)	September 20, 2021	December 6, 2021
Trial Setting Conference (see Section III(C)(1) of Standing Order for Civil Cases)	September 30, 2021	December 16, 2021
Fact Discovery Cutoff	November 3, 2021	January 12, 2022
Designation of Opening Experts with Reports	November 24, 2021	February 2, 2022
Designation of Rebuttal Experts with Reports	December 22, 2021	March 2, 2022
Designation of Reply Experts with Reports	January 5, 2022	March 16, 2022
Expert Discovery Cutoff	January 19, 2022	March 30, 2022
Deadline(s) for Filing Discovery Motions	<u>See Civil Local Rule 37-3</u>	<u>See Civil Local Rule 37-3</u>
Deadline to Complete Private Mediation	February 9, 2022	April 20, 2022
Deadline for Filing Dispositive Motions (see Section IV and V of Standing Order for Civil Cases)	March 11, 2022	May 20, 2022
Deadline for Filing Opposition(s) to Dispositive Motions	April 15, 2022	June 24, 2022
Deadline for Filing Reply(ies) to Dispositive Motions	May 6, 2022	July 15, 2022
Hearing on Anticipated Dispositive Motion(s)	June 23, 2022	September 1, 2022

1 **IT IS SO STIPULATED.**

2 Dated: September 16, 2021

DAVID R. EBERHART
JAMES K. ROTHSTEIN
DANIEL H. LEIGH
O'MELVENY & MYERS LLP

5 By: /s/ David R. Eberhart

6 David R. Eberhart

7 Attorneys for Plaintiffs
8 ELASTICSEARCH, INC. and
ELASTICSEARCH B.V.

9 Dated: September 16, 2021

JOSEPH C. GRATZ
ADITYA V. KAMDAR
SAMUEL J. ZEITLIN
DURIE TANGRI LLP

12 By: /s/ Joseph C. Gratz

13 Joseph C. Gratz

14 Attorneys for Defendants
15 AMAZON.COM INC. and
AMAZON WEB SERVICES

16 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

19 Dated: _____

20 Hon. Edward J. Davila
United States District Judge

21 **FILER'S ATTESTATION**

22 Pursuant to Civil Local Rule 5-1(i)(3), I attest that all other signatories listed, and on whose behalf
23 this filing is submitted, concur in the filing's content and have authorized the filing.

25 Dated: September 16, 2021

26 /s/ Joseph C. Gratz
27 JOSEPH C. GRATZ

DECLARATION OF JOSEPH C. GRATZ

I, Joseph C. Gratz, hereby declare:

1. I am a partner at Durie Tangri LLP, counsel of record for Defendants Amazon.com, Inc. and Amazon Web Services, Inc. I make this declaration based on my own personal knowledge. If called as a witness, I could and would testify under oath to the matters set forth within.

2. Defendants on April 12, 2021 launched OpenSearch, a fork of Elasticsearch source code licensed under the Apache 2.0 license. This fork was announced earlier this year, on January 14, 2021, in response to an announcement by Plaintiffs that they would be changing the license terms of their products. The OpenSearch project is the new home for plugins and features previously distributed with Open Distro for Elasticsearch, an open-source project that is no longer in development. On June 25, 2021, Defendants noted that the Open Distro for Elasticsearch website would be selectively decommissioned and that all future project updates would be available on the OpenSearch website under the OpenSearch name.

3. On September 8, 2021, Defendants renamed Amazon Elasticsearch Service to Amazon OpenSearch Service, given that this managed service would support the new OpenSearch fork.

4. The parties remain actively engaged in substantive settlement discussions that seek to resolve this dispute in its entirety. The renaming of September 8, 2021, combined with the aforementioned changes, provides to the parties sufficient factual clarity regarding Defendants' intended usages to determine quickly whether the parties may reach a full resolution of Plaintiffs' claims

5. There have been six previous time modifications in this case: (1) on October 22, 2019, pursuant to the parties' stipulation, Defendants received extended time to respond to the complaint on or before November 20, 2019 (Dkt. No. 16); (2) on June 17, 2020, pursuant to the parties' stipulation, the Court continued all case management deadlines by approximately 90 days in light of the COVID-19 pandemic (Dkt. No. 28); (3) on September 24, 2020, pursuant to the parties' stipulation, the Court continued all case management deadlines by approximately 90 days in light of the parties' ongoing substantive settlement discussions; (4) on December 4, 2020, pursuant to the parties' stipulation, the Court continued all case management deadlines by approximately 112 days in light of the parties' ongoing substantive settlement discussions (Dkt. No. 32); (5) on March 29, 2021, pursuant to the parties'

1 stipulation, the Court continued all case management deadlines by approximately 90 days in furtherance
2 of the parties' licensing changes and rebranding announcements as well as the parties' ongoing
3 substantive settlement discussions; and (6) on June 24, 2021, pursuant to the parties' stipulation, the
4 Court continued all case management deadlines by approximately 90 days in furtherance of Defendants'
5 then-forthcoming rebranding changes and the parties' ongoing substantive settlement discussions.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is
7 true and correct. Executed this September 16, 2021 at San Francisco, California.

8
9
10 */s/ Joseph C. Gratz*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JOSEPH C. GRATZ

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2021 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

/s/ Joseph C. Gratz
JOSEPH C. GRATZ